

**Comments of
Consumers for a Responsive Legal System**
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**on the Proposed Amendments to Subchapter 9.100 *et seq.* and
Rules 8.110 and 8.120 of the Michigan Court Rules**

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Consumers for a Responsive Legal System (“Responsive Law”) thanks the Court for the opportunity to present its comments on the proposed changes to its lawyer discipline processes. We are a national nonprofit organization that works to make the civil legal system more affordable, accessible and accountable to the people it is meant to serve. As such, when analyzing a proposed rule, we ask two questions: “How will it protect clients?” and “How will it affect access to the legal system?”

Rule 9.104 Grounds for Discipline in General

Responsive Law endorses the changes proposed by the Attorney Grievance Commission because they would help hold accountable those lawyers who repeatedly are derelict in their duties to their clients. Although such lawyers comprise a small minority of the profession, they not only harm their clients, but also dissuade consumers from using the legal system.

AGC Proposed Rule 9.104(A)(10) would protect potential clients from harm by making “gag agreements” a disciplinary violation. Ordinarily, private settlement of disputes is worth encouraging. However, any settlement with a client of a professional misconduct matter that requires that client to remain silent about the matter runs contrary to public policy. Most potential clients have very little information upon which to base their decision to hire a particular lawyer. Disciplinary records are one of the few areas where useful data about lawyers is available to them. Preventing potential clients from knowing the full extent of a lawyer’s professional misconduct will leave them entirely in the dark about this important component of the hiring decision.

AGC Proposed Rule 9.104(B) would also protect clients from incompetent lawyers. It is entirely appropriate to consider a pattern of misconduct in disciplinary proceedings. For example, an individual instance of failing to return a client’s phone call might be only a *de minimis* violation of Rule 1.4. However, a lawyer who repeatedly fails to return the calls of clients is engaging in misconduct that should be subject to discipline. Again, potential clients are left in the dark if these patterns of misconduct are not incorporated in the disciplinary system.

Rule 9.111 Hearing Panels

Responsive Law endorses proposed Rule 9.111(B), which would ban lawyers who have been subject to discipline from serving on an Attorney Discipline Board hearing panel. Allowing such lawyers to determine disciplinary action against other lawyers only reinforces the perception that lawyers are predisposed to overlook misconduct by their peers.

Rule 9.120 Reciprocal Discipline

Responsive Law endorses proposed Rule 9.120(A)(2), clarifying that lawyers who have been subject to discipline orders in other states shall inform Michigan of such orders. We also endorse proposed Rule 9.120(C), which requires that such lawyers be subjected to the same discipline in Michigan. As multijurisdictional practice grows in popularity, clients will have access to a wider range of lawyers. They should not have to trade protection for access. An interstate legal market demands interstate protection from unethical lawyers. The proposed rules protect Michiganders from unethical lawyers regardless of where their misconduct occurred.